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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,597	08/20/2001	Iran Basil Shine	768-010453-	5844

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PERMAN & GREEN  
425 POST ROAD  
FAIRFIELD, CT 06824

EXAMINER
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LAM, ANN Y

ART UNIT	PAPER NUMBER
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1641

DATE MAILED: 09/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/869,597

Applicant(s)

SHINE ET AL.

Examiner

Ann Y. Lam

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 8-16 is/are rejected.
- 7) ☒ Claim(s) 2-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1 and 6. 6) ☐ Other: .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 8-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Tarnowski et al., 4,82,401.

Tarnowski et al. disclose a method of detecting agglutination in a sample of cells (see column 18, lines 10-29), comprising the steps of inducing the cells to change at least one of their properties so as to separate agglutinated cells (see column 14, lines 38-42) and detecting the resultant alteration in the cell population.

As to claim 8, the method includes pretreating the sample of cells to induce agglutination, see column 14, lines 29-32column 15, lines 59-62.

As to claim 9, the cell sample is obtained from a source of whole blood, see column 17, lines 47-50.

As to claim 10, the sample of cells are treated with antibodies from a different source, see column 18, lines 12-17 .

As to claims 11 and 12, the cells are treated in order to determine the blood type, see column 18, lines 19-12.

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As to claim 13, the antibodies from the different source are manufactured, or come from whole blood, plasma or serum, see column 18, lines 19-12.

As to claim 14, the sample of cells is pre-treated by exposure to heat.

As to claim 15, the sample is warmed to a temperature of between 35 to 40 degree Celcius see column 14, lines 43-59. (The sample is considered to be heated to the temperature range disclosed by Tarnowski et al. if the original temperature of the sample is lower than the temperature chosen to promote aggregation or coaggregation of the particles.)

As to claim 16, the sample of cells is pre-treated by cooling the sample, see column 14, lines 43-59. (The sample is considered to be cooled to the temperature range disclosed by Tarnowski et al. if the original temperature of the sample is higher than the temperature chosen to promote aggregation or coaggregation of the particles.)

### ***Allowable Subject Matter***

Claims 2-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the combination of steps including the step of measuring the force required to separate agglutinated cells, or the step of inducing the cells to change the shape of the cells, or the step of causing the cells to sphere, or the step of changing the osmolality of

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the liquid medium in which the cells are suspended, or the step of counting the number of cells passing through a sensor was not found in the prior art search.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Vorpahl et al., 5,071,774, disclose a method for agglutination determination.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Y. Lam whose telephone number is (703) 306-5560. The examiner can normally be reached on M-Sat 11-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le can be reached on (703)305-3399. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0196.

A.L.



LONG V. LE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

09/22/13